

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 20

Introduced by Assembly Member Alejo

December 1, 2014

An act ~~relating to immigration~~, to add Chapter 8 (commencing with Section 11050) to Part 1 of Division 3 of the Unemployment Insurance Code, relating to undocumented workers.

LEGISLATIVE COUNSEL'S DIGEST

AB 20, as amended, Alejo. Undocumented ~~immigrants~~ workers: California Agricultural Act.

Existing provisions of federal law regulate immigration. Under federal law, state law regulating immigration is preempted.

This bill would require the Employment Development Department and the Department of Food and Agriculture to convene a working group to consult with the United States Department of Homeland Security and the United States Department of Justice in order to determine the legal roles and responsibilities of federal and state agencies in implementing a program to provide undocumented persons who are agricultural employees with a permit to work and live in California. The bill would require the Governor, using the report, to either make a formal request to the federal government to implement a program to provide undocumented persons who are agricultural employees with a permit to work and live in California, or issue an explanation as to why a formal request was not made and make recommendations to the Legislature for how a program to provide undocumented persons who are agricultural employees with a permit to work and live in California should be structured.

The bill would also describe a framework for a program to provide undocumented persons who are agricultural employees a permit to work and live in California if such a program were to be authorized by federal law.

~~Existing law establishes the Franchise Tax Board and prescribes its various powers and duties regarding, among other things, the administration of state personal income taxes and requires that an income tax return be filed by every individual who has income in excess of specified amounts. Existing law allows an income tax return to be filed with the Franchise Tax Board using an individual taxpayer identification number.~~

~~This bill would make findings and declarations regarding immigration and immigrants within the United States and California, including encouraging those immigrants who are not eligible to receive a social security number to file a California state income tax return using an individual taxpayer identification number and that California would benefit by providing undocumented persons who are agricultural or service industry employees with a permit to work and live in the state.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. This act shall be known, and may be cited, as the*
- 2 *California Agricultural Act.*
- 3 *SEC. 2. The Legislature finds and declares all of the following:*
- 4 *(a) Since 2007, California's agricultural industry has*
- 5 *experienced the highest agricultural sales recorded to date*
- 6 *(\$36,300,000,000 in 2007, \$38,400,000,000 in 2008,*
- 7 *\$34,800,000,000 in 2009, \$37,500,000,000 in 2010,*
- 8 *\$43,500,000,000 in 2011, \$44,300,000,000 in 2012, and*
- 9 *\$46,400,000,000 in 2013) and continues to lead the nation in gross*
- 10 *agricultural cash receipts.*
- 11 *(b) California's agricultural industry is dependent on immigrant*
- 12 *labor. One recent study of 13 California counties gathered*
- 13 *information from 2,300 farmworkers. The profile data reported*
- 14 *in this study suggests that 95 percent of California agricultural*
- 15 *workers were born outside the United States and 91 percent in*
- 16 *Mexico. On average, they have been in the United States 11.1*
- 17 *years. Twenty-two percent have been in the United States two years*

1 or less, 10 percent are United States citizens, 33 percent have
2 green cards, and 57 percent are unauthorized. Of the newcomers
3 who have been here less than two years, 99 percent are
4 unauthorized.

5 (c) Immigration policies that seek to deport unauthorized
6 farmworkers or force them to abandon their jobs in agriculture
7 would wreak swift and substantial damage to the agricultural
8 industry in California. California agriculture would lose much of
9 its experienced work force that has made it the most productive
10 agricultural area in the world. At the same time, these policies
11 would impose a substantial human cost on hundreds of thousands
12 of farmworkers and their children, most of whom are United States
13 citizens.

14 (d) The federal employment-based immigration system is broken.
15 The programs for admitting foreign workers for temporary and
16 permanent jobs are rigid, cumbersome, inefficient, do little to
17 protect the wages and working conditions of foreign and domestic
18 workers, do not respond very well to employers' needs, and give
19 almost no attention to adapting the number and characteristics of
20 foreign workers to domestic labor shortages.

21 (e) Nevertheless, Congress has repeatedly failed to pass
22 comprehensive immigration reform including the Agricultural Job
23 Opportunity, Benefits, and Security Act. Instead Congress is
24 considering making the E-Verify program mandatory for all
25 employers. Requiring agricultural employers to verify whether
26 workers are employment-authorized would eliminate a significant
27 portion of the existing agricultural workforce with no certainty
28 that these vacancies will be filled by legal residents.

29 (f) Due to the absence of federal action on comprehensive
30 immigration reform, the counterproductive results of E-Verify,
31 and the unworkable framework of the federal H-2A guest worker
32 program, agricultural interests in Oklahoma and Utah have
33 introduced legislation creating state guest worker programs and
34 several other states are considering the introduction of similar
35 state initiatives.

36 (g) Recognizing the significant contributions that unauthorized
37 workers make to California's economy and the need to bring these
38 workers out of the shadows in order to improve worker conditions
39 and at the same time provide a legal workforce for the agricultural

1 industry, it is imperative that a program be created for current
2 unauthorized workers in these industries.

3 SEC. 3. It is the intent of the Legislature that the executive and
4 legislative branches of the federal government give the highest
5 priority to enacting comprehensive immigration reform legislation
6 that would confer legal status to reside in the United States to
7 persons who would participate in the program described in this
8 act.

9 SEC. 4. Chapter 8 (commencing with Section 11050) is added
10 to Part 1 of Division 3 of the Unemployment Insurance Code, to
11 read:

12
13 CHAPTER 8. CALIFORNIA AGRICULTURAL WORKER PROGRAM

14
15 Article 1. General Provisions

16
17 11050. As used in this chapter:

18 (a) "Employee" means an agricultural employee, as defined in
19 Section 1140.4 of the Labor Code.

20 (b) "Employer" means an agricultural employer, as defined in
21 Section 1140.4 of the Labor Code or a farm labor contractor.

22 (c) "Farm labor contractor" means a contractor, as defined in
23 Section 1682 of the Labor Code.

24 (d) "Farm labor organization" means a labor organization, as
25 defined in Section 1117 of the Labor Code, that represents
26 employees rendering personal services in connection with the
27 production of agricultural products.

28 (e) "Immediate family member" means a spouse or child under
29 18 years of age or 18 years or older if the child is enrolled in an
30 accredited program as described in paragraph (1) of subdivision
31 (c) of Section 11056.

32 (f) "Undocumented person" means a person who is an
33 unauthorized alien as defined in Section 1324a(h)(3) of Title 8 of
34 the United States Code.

35 11051. (a) No later than February 1, 2017, the Employment
36 Development Department and the Department of Food and
37 Agriculture shall convene a working group to consult with the
38 United States Department of Homeland Security and the United
39 States Department of Justice to determine the legal roles and
40 responsibilities of federal and state agencies in implementing a

1 *program to provide undocumented persons who are agricultural*
2 *employees with a permit to work and live in California.*

3 *(b) The working group shall consist of representatives from the*
4 *Employment Development Department, the Department of Food*
5 *and Agriculture, the Attorney General, two Members of the Senate,*
6 *two Members of the Assembly, and stakeholders, including, but*
7 *not limited to, agricultural employers, farm labor contractors, and*
8 *farm labor organizations. The legislative members of the working*
9 *group shall be nonvoting ex-officio members.*

10 *(c) Issues to be addressed by the working group shall include*
11 *the following:*

12 *(1) Qualifying criteria for undocumented persons to apply for*
13 *the program.*

14 *(2) Documentation requirements for applicants.*

15 *(3) A determination of which agency will issue the permits.*

16 *(4) Ensuring security, including through the development of*
17 *non-tamper-proof work authorization documentation or security*
18 *procedures and protocols, or all of these methods.*

19 *(5) A determination of the process and the agency that should*
20 *conduct background and security checks and the extent background*
21 *and security checks should be required.*

22 *(6) A determination regarding the payment that should be*
23 *required for the submission and review of applications and*
24 *background and security checks.*

25 *(7) Protocols regarding tracking of employees under the*
26 *program.*

27 *(8) Consideration of a renewal process for the work permit.*

28 *(9) Consideration of the extent to which employees will be*
29 *allowed to travel out of the country and the requirements for that*
30 *travel.*

31 *(10) Determination of a fee structure to cover the costs of the*
32 *program, including who will pay and how often the fee should be*
33 *assessed to cover costs of the program.*

34 *(11) Determination of the costs involved in receiving,*
35 *processing, and issuing work permits.*

36 *(12) Any other procedures and legal requirements associated*
37 *with implementation of the program required by the federal*
38 *government to ensure the proper role and responsibilities of the*
39 *State of California.*

(d) (1) The working group shall create a report expressing its recommendations, which shall incorporate the model program described in Article 2 (commencing with Section 11055). This report shall be submitted to the Legislature and the Governor no later than July 1, 2017.

(2) A report to be submitted pursuant to paragraph (1) shall be submitted in compliance with Section 9795 of the Government Code.

(e) By August 1, 2017, the Governor, using the report described in subdivision (d), shall either make a formal request to the federal government to implement a program to provide undocumented persons who are agricultural employees with a permit to work and live in California, or issue an explanation as to why a formal request was not made and make recommendations to the Legislature for how a program to provide undocumented persons who are agricultural employees with a permit to work and live in California should be structured.

(f) If the federal government approves or adopts a program to provide undocumented persons who are agricultural employees with a permit to work and live in California, it is the intent of the Legislature to enact necessary implementing legislation.

Article 2. Model Program Requirements

11055. It is the intent of the Legislature that the provisions of this article provide a model and framework for a program to provide undocumented persons who are agricultural employees with a permit to work and live in California.

11056. (a) The program should not be implemented until a certification is made by a designated entity that not enough legal residents in California will fill all open agricultural jobs in California.

(b) The program should be limited to an undocumented person who meet all of the following criteria:

(1) The undocumented person shall be 18 years of age or older.

(2) The undocumented person shall live in California.

(3) (A) The undocumented person has performed agricultural employment in the United States for at least 863 hours or 150 workdays during the 24-month period ending on January 26, 2015, or earned seven thousand five hundred dollars (\$7,500) or more

1 *from agricultural industry employment in the United States, and*
2 *has maintained agricultural employment for 431 hours or 75*
3 *workdays, or earned three thousand seven hundred fifty dollars*
4 *(\$3,750) or more from that employment, on an annual basis after*
5 *receiving the permit.*

6 *(B) An undocumented person shall be allowed to conclusively*
7 *establish employment status by submitting any of the following*
8 *records demonstrating the employment:*

9 *(i) Records maintained by the Social Security Administration,*
10 *Internal Revenue Service, or any other federal, state, or local*
11 *government agency, an employer, a labor organization, or day*
12 *labor center.*

13 *(ii) Itemized wage statements issued to the employee pursuant*
14 *to Section 226 of the Labor Code.*

15 *(C) An undocumented person who is unable to submit a*
16 *document described in subparagraph (B) should be allowed to*
17 *satisfy the requirement in subparagraph (A) by submitting at least*
18 *two other types of reliable documents that provide evidence of*
19 *employment, including any of the following:*

20 *(i) Bank records.*

21 *(ii) Business records.*

22 *(iii) Remittance records.*

23 *(D) The program shall be implemented in a manner that*
24 *recognizes and takes into account the difficulties encountered by*
25 *an undocumented person in obtaining evidence of employment due*
26 *to the person's undocumented status, including the crediting of*
27 *work in cases in which an undocumented person has been employed*
28 *under an assumed name.*

29 *(4) The undocumented person shall submit to a fingerprinted*
30 *criminal history background check.*

31 *(5) The undocumented person has not been convicted of a felony,*
32 *or three or more misdemeanors, as confirmed by the fingerprinted*
33 *criminal history background check.*

34 *(6) The undocumented person shall pay a fee to cover the costs*
35 *of administering the program.*

36 *(c) The program shall extend to an undocumented person who*
37 *is an immediate family member of a person to whom a work permit*
38 *has been issued. The immediate family member shall be required*
39 *to meet all of the following:*

1 (1) *The immediate family member shall reside with the*
2 *undocumented person to whom a permit was issued or be enrolled*
3 *in an accredited two- or four-year college or graduate program*
4 *in California.*

5 (2) *The immediate family member shall submit to a fingerprinted*
6 *criminal history background check.*

7 (3) *The immediate family member shall never have been*
8 *convicted of a felony, or three or more misdemeanors, as confirmed*
9 *by the fingerprinted criminal history background check.*

10 (4) *The immediate family member shall pay a fee to cover the*
11 *costs of administering the program.*

12 11057. *Once the program becomes authorized and operational,*
13 *the following requirements shall apply:*

14 (a) (1) *An official or employee of the state government may not*
15 *do any of the following:*

16 (A) *Use information furnished by an applicant for purposes of*
17 *applying for a permit under the program or any information*
18 *provided by an employer or former employer for any purpose other*
19 *than to make a determination on the application.*

20 (B) *Make any publication in which the information furnished*
21 *by any particular individual can be identified.*

22 (C) *Permit a person other than a sworn officer or employee of*
23 *the state to examine individual applications.*

24 (2) *Information furnished by an applicant shall be provided to*
25 *both of the following:*

26 (A) *A duly recognized state law enforcement entity in connection*
27 *with a criminal investigation or a prosecution, if the information*
28 *is requested in writing by the entity.*

29 (B) *An official coroner, for purposes of affirmatively identifying*
30 *a deceased individual, whether or not the death of the individual*
31 *resulted from a crime.*

32 (3) *Any person who files an application under the program and*
33 *knowingly and willfully falsifies, conceals, or covers up a material*
34 *fact or makes any false, fictitious, or fraudulent statements or*
35 *representations, or makes or uses any false writing or document*
36 *knowing that it contains any false, fictitious, or fraudulent*
37 *statement or entry shall be disqualified from applying under the*
38 *program.*

1 ***(b) The entities administering the program shall ensure that***
2 ***employers employing workers authorized under the program make***
3 ***each of the following assurances:***

4 ***(1) That the job opportunity for which an employer employs an***
5 ***undocumented person authorized under the program is not vacant***
6 ***because a worker is involved in a strike, lockout, or because of a***
7 ***work stoppage in the course of a labor dispute involving the job***
8 ***opportunity at the same place of employment.***

9 ***(2) That the wages and benefits provided to undocumented***
10 ***persons working under a permit issued under the program are***
11 ***comparable to the wages and benefits provided to legal residents,***
12 ***but in no case less than the state minimum wage.***

13 ***(3) That an employer participating in the program shall comply***
14 ***with all applicable federal, state, and local labor laws, including***
15 ***laws affecting migrant and seasonal agricultural workers, with***
16 ***respect to all United States workers and undocumented workers.***

17 ***(c) An employer of a person permitted to work in this state under***
18 ***the program should provide a written record of employment,***
19 ***demonstrating the hours worked and wages paid, to the employee***
20 ***issued a permit, and provide a copy of the record to the state.***

21 ***11058. (a) An employee permitted to work in this state under***
22 ***the program shall be entitled to the same wage, hour, and working***
23 ***condition protections provided to an employee who is a legal***
24 ***resident of California.***

25 ***(b) A permit issued under the program may not limit an***
26 ***employee to a single employer or occupation.***

27 ***11059. No later than three years after the program is***
28 ***implemented, the administering entities shall prepare and transmit***
29 ***to the Assembly Committee on Labor and Employment and the***
30 ***Senate Committee on Labor and Industrial Relations a report***
31 ***describing the results of a review of the implementation of, and***
32 ***compliance with, the requirements of the program. The report***
33 ***shall address and provide information as to all the following:***

34 ***(a) Whether the program ensured an adequate and timely supply***
35 ***of qualified, eligible workers at the time and place needed by***
36 ***employers.***

37 ***(b) Whether the program ensured that undocumented persons***
38 ***authorized to work under the program did not displace eligible,***
39 ***qualified United States workers or diminished the wages and other***

1 *terms and conditions of employment of eligible United States*
2 *workers.*

3 *(c) Recommendations for improving the operation of the*
4 *program for the benefit of participating employers, eligible United*
5 *States workers, participating undocumented workers, and*
6 *governmental agencies involved in the administration of the*
7 *program.*

8 *(d) Recommendations for the continuation or termination of the*
9 *program.*

10 *(e) A report to be submitted pursuant to subdivision (a) shall*
11 *be submitted in compliance with Section 9795 of the Government*
12 *Code.*

13 ~~SECTION 1. The Legislature finds and declares all of the~~
14 ~~following:~~

15 ~~(a) The United States of America is a nation of values, founded~~
16 ~~on the principles that all men and women are created equal, and~~
17 ~~the promise of freedom for all.~~

18 ~~(b) We are a nation of immigrants, who believe in the promise~~
19 ~~of freedom and opportunity.~~

20 ~~(c) The current immigration system is broken, antiquated, and~~
21 ~~not meeting the challenges of the 21st century. It separates families,~~
22 ~~including same-sex couple families, creates long backlogs for~~
23 ~~families seeking reunification, and neglects the hard work and~~
24 ~~financial contributions immigrants make to our country.~~

25 ~~(d) Since 2008, more than 1.6 million immigrants have been~~
26 ~~deported, and one in every 10 American children faces the threat~~
27 ~~of the deportation of a parent.~~

28 ~~(e) Approximately 11 million undocumented immigrants are in~~
29 ~~the United States, and California has the largest population of~~
30 ~~immigrants, both legal and undocumented.~~

31 ~~(f) Immigrants and their children constitute nearly one-half of~~
32 ~~California's population and live and work in all 58 counties, most~~
33 ~~notably in the San Diego, Central Valley, Los Angeles, Ventura,~~
34 ~~and greater San Francisco areas.~~

35 ~~(g) Approximately 77 percent of undocumented immigrants~~
36 ~~who reside in California live with family members who are legal~~
37 ~~United States residents and citizens.~~

38 ~~(h) One in 10 workers in California is an undocumented~~
39 ~~immigrant, and immigrants are a vibrant, productive, and vital part~~
40 ~~of the state's growing economy.~~

1 (i) Immigrants are essential in keeping the American economy
2 strong; from technology programmers in the Silicon Valley to
3 restaurant owners and workers, immigrants are filling an intrinsic
4 need in the labor force.

5 (j) Agricultural workers have been performing very important
6 and difficult work to maintain America's food supply, and have a
7 role of ensuring that Americans have safe and secure agricultural
8 products to sell and consume.

9 (k) Students should not be punished for their immigration status.
10 Instead, they should be given recognition for their sacrifice, hard
11 work, and determination.

12 (l) The United States can do a better job of attracting and
13 keeping the world's best and brightest. A comprehensive
14 immigration reform should also grant immigrants who have
15 received a Ph.D. or master's degree in science, technology,
16 engineering, or mathematics from an American university the
17 opportunity to invest in and contribute to this great nation. For the
18 future of our economy, it makes no sense to educate the world's
19 future innovators and entrepreneurs only to ultimately force them
20 to leave our country at the moment they are most able to contribute
21 to our economy.

22 (m) Modernizing our antiquated and dysfunctional immigration
23 system will uphold our nation's basic values of fairness and
24 equality, as well as access to health care.

25 (n) A comprehensive, as well as compassionate, approach to
26 solve our broken immigration system should be one that works
27 for all communities and families in America.

28 (o) The full recovery of the California economy depends upon
29 the continued residence and employment of all current and future
30 members of the state workforce, whether currently employed or
31 in the process of education or training for future employment.

32 (p) The removal of residents and employees, who are free of
33 any serious criminal history or criminal misconduct, from the state
34 during this time of economic recovery is disruptive of the nascent
35 recovery, and separates and disrupts families and community, with
36 significant secondary effects on the state economy and the state
37 education system.

38 (q) The Legislature recognizes and acknowledges the federal
39 government's exclusive authority in the area of immigration
40 regulation, including the determination of enforcement priorities

1 and the granting of discretionary relief on an individual or class
2 wide basis.

3 (r) ~~The failure of the Congress to act on much-needed federal~~
4 ~~legislation to provide relief from deportation and a pathway to~~
5 ~~citizenship for those millions of undocumented persons who have~~
6 ~~resided peacefully in California and other states for many years,~~
7 ~~raising families, paying taxes, and contributing to our economy~~
8 ~~and society, has perpetuated a structural problem in our state~~
9 ~~economy, with too many workers intimidated from playing a~~
10 ~~complete role in our social and economic development by the lack~~
11 ~~of legal protection occasioned by their status.~~

12 (s) ~~Despite these impediments, many undocumented workers~~
13 ~~have endeavored year after year to file California state income tax~~
14 ~~returns using an individual taxpayer identification number.~~

15 (t) ~~Encouraging those who are not eligible to receive a social~~
16 ~~security number to file a California state income tax return using~~
17 ~~an individual taxpayer identification number is in the best interest~~
18 ~~of the state, its economy, and its tax laws.~~

19 (u) ~~California will benefit from a program to provide~~
20 ~~undocumented persons who are agricultural or service industry~~
21 ~~employees with a permit to work and live in California.~~